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Supreme Court of the United States

October Term, 1975

No. 75-1898

MARINE ENGINEERS BENEFICIAL ASSOCIATION, ASSOCIATED MARITIME OFFICERS, AFL-CIO,
Petitioners,

vs.

ROLLA R. JOHNSON, *et al.*,
Respondents.

PETITION FOR WRIT OF CERTIORARI
To the United States Court of Appeals
For the Sixth Circuit

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TABLE OF CONTENTS

Opinions Below 1
Statement of Jurisdiction 2
Question Presented 2
Statutory Provisions Involved 2
Statement of the Case 3

A. Introduction 3
B. Background 4
C. Proceeding Below 7

Reasons for Granting the Writ of Certiorari 8

1. This Case Presents an Important Issue of National Labor Policy Requiring Resolution by This Court 8

A. The issue in this case is whether the Marine Engineers Beneficial Association, Associated Maritime Officers, AFL-CIO, qualify for non-statutory intervention of right within the meaning of Rule 24(a)(2) Fed. R. Civ. P. when the subject of the original cause involves: the construction of the Labor Management Reporting and Disclosure Act, 29 U.S.C. §§411(a)(1) and 501(a), equal voting rights and fiduciary duties of union officials 8

B. Review of this case is essential to the preservation of the fundamental rights of the union and essential to guarantee the full and active participation by the rank and file in the affairs of their union 12

Conclusion 12

Appendix:

Opinion of the District Court A1
Opinion of the Court of Appeals A4
Judgment of the Court of Appeals A12

TABLE OF AUTHORITIES

Cases

American Federation of Musicians v. Wittstein, 379 U.S. 171 (1964) 9
Diaz v. Southern Drilling Corp., 427 F.2d 1118 (5th Cir. 1970), *cert. denied*, 400 U.S. 878 (1970) 11
Donaldson v. United States, 400 U.S. 517 (1971) 10
Edmondson v. Nebraska ex rel. Meyer, 383 F.2d 123 (8th Cir. 1967) 8
Martin v. Kalvar Corp., 411 F.2d 552 (5th Cir. 1969) 11
Navarro v. Gannon, 385 F.2d 512 (2nd Cir. 1967) 9
Nuesse v. Camp, 128 U.S. App. D.C. 172, 385 F.2d 694 (1967) 8
Sertic v. The District Council of Carpenters, 423 F.2d 515 (6th Cir. 1970) 9
Stockton v. United States, 493 F.2d 1021 (9th Cir. 1974) 8

Texts

MOORE'S FEDERAL PRACTICE, para. 24.09-1 8

Statutes

29 U.S.C. 411(a)(1) 8, 9, 10
29 U.S.C. 501(a) 8, 10
Rule 24(a)(2) Fed. R. Civ. P. 8, 10, 11, 12

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ROLLA R. JOHNSON, *et al.*,
Respondents.

PETITION FOR WRIT OF CERTIORARI
To the United States Court of Appeals
For the Sixth Circuit

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit in this case.

OPINIONS BELOW

The opinion of the Court of Appeals has not yet been reported, but is printed in the Appendix attached hereto, *infra*, p. A4. The opinion of the District Court is reported as *Blanchard, et al. v. Johnson, et al.*, 388 F. Supp. 208 (1975) and is printed in the Appendix, *infra*, p. A1.

STATEMENT OF JURISDICTION

The judgment of the Court of Appeals was entered on April 2, 1976. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

QUESTION PRESENTED

Does the Marine Engineers Beneficial Association, Associated Maritime Officers, AFL-CIO, qualify for nonstatutory intervention of right within the meaning of Rule 24 (a)(2) Fed. R. Civ. P. when the subject of the original cause involves the construction of the Labor Management Reporting and Disclosure Act, 29 U.S.C. Sections 411(a)(1) and 501(a), equal voting rights of union members and fiduciary duties of union officials in that the Marine Engineers Beneficial Association proposal for affiliation was not placed on the ballot for consideration by the rank and file union members.

STATUTORY PROVISIONS INVOLVED

Rule 24(a)(2) Federal Rules Civil Procedure:

"(a) Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action: . . . (2) when the applicant claims an interest relating to the property or transaction which is subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties."

STATEMENT OF THE CASE

A. Introduction

On June 18, 1974, Petitioners who were all members in good standing of the Great Lakes and Rivers District, Masters, Mates and Pilots—Local 47 (hereinafter Local 47)[1] filed a complaint along with an application for leave to sue and a motion for a preliminary injunction in the Western Division of the United States Federal District Court for the Northern District of Ohio. The complaint was based on §§101, 102 and 501 of the Labor Management Reporting and Disclosure Act (hereinafter LMRDA) and §301 of the Labor Management Relations Act (hereinafter LMRA), 29 U.S.C. §§185, 411, 412 and 501. Petitioners sought to have the balloting on a referendum for affiliation of Local 47 with the International Longshoremen's Association, AFL-CIO (hereinafter ILA) enjoined, the ballots already cast impounded and destroyed, and any future referendum on the question of affiliation, as well as any actual merger or affiliation, enjoined unless a plan therefor had first been submitted to the Court which contained provisions for full disclosure of all relevant terms of any proposed affiliation, accompanied by sufficient time before balloting for members to offer their views thereon, and adequate protection for the secrecy and integrity of the ballot.

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[1]Local 47 is a "Labor Organization" within the meaning of 29 U.S.C. §402. Its membership is made up of approximately 550 men who are employed as supervisory personnel on ships which sail the Great Lakes and adjoining rivers and waterways. The members of Local 47 are seafaring men who spend most of the year on ships sailing the Great Lakes. The principal office of Local 47 is in Cleveland, Ohio. The individual Defendants in this action are or were officers and members of the Executive Board of Local 47 (A. 202, 215). (A refers to the Appendix in the Court of Appeals.)

B. Background

While Local 47 was going through the process of disaffiliation with the IOMMP,[2] it began to receive inquiries from other organizations as to possible affiliation with them. These included inquiries from the International Brotherhood of Teamsters, the Marine Engineers Beneficial Association—Associated Maritime Officers, AFL-CIO (hereinafter MEBA), the ILA, the Steelworkers Union, and Local 333, United Marine Association (A. 102-104, 129).

The MEBA proposal for affiliation which was made to Local 47 included a promise of complete autonomy for Local 47 (A. 129). MEBA also made a number of additional proposals accompanying their offer of affiliation which, arguably, would have been of great benefit to the members of Local 47.[3]

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[2]For many years, Local 47 was affiliated with the International Organization of Masters, Mates and Pilots (hereinafter IOMMP), but in November 1973, it broke away from that organization because the IOMMP made certain changes in its constitution which threatened the autonomy of Local 47 (A. 126, 127, 137). Part of these constitutional changes involved the IOMMP affiliation with the ILA.

[3]These proposals were set down in writing in a letter from Raymond T. McKay, President of MEBA to Defendant Duff, the newly elected President of Local 47, on November 11, 1974 and included:

a. a grant of an autonomous charter to Local 47 with a right to retain its own treasury, officers, constitution and by-laws;

b. the right to negotiate contracts in Local 47's existing bargaining units and complete protection of the AFL-CIO no-raiding agreement;

c. the right to continued non-interference with the operation of the Great Lakes and Rivers District and Maritime Pension Plan;

d. a waiver of all charter fees and back dues;

e. a per capita fee of $1.35 per member per month payable to MEBA for active members only, not retired members;

(*Footnote continued on following page*)

Around May 16, 1974, Respondent Johnson acting alone and without the other members of the Executive Board of Local 47, completed negotiations with President Thomas W. Gleason of the ILA for an affiliation of Local 47 with the ILA (A. 140). At no time did Johnson or Vice President Duff of Local 47 read the constitution of the ILA, preferring instead to rely upon the oral assurances of its President that Local 47 would retain its autonomy[4] (A. 142-143).

Footnote continued—

f. available office space in MEBA offices and use of their hard and soft ware by Local 47;

g. a joint organizational campaign on the Great Lakes and Rivers to be financed by MEBA; and

h. access to MEBA's legislative, lobbying machinery (A. 225-228).

The Teamsters apparently also offered Local 47 a million dollar fund for organization purposes (A. 129). However, for reasons of their own, the Executive Board chose to vote on and submit only the affiliation proposal from the ILA to the membership for a vote (A. 104).

[4]The price of the affiliation agreement with the ILA also meant that Local 47 members would have to pay $1.35 per month per capita tax which would amount to approximately $9,000 per year (A. 106, 143). Neither was there any written understanding as to the relationship of Local 47 and the ILA in regards to the certain articles of the ILA's constitution which raised serious questions as to whether Local 47 would remain autonomous or not (A. 142-143). The agreement between Defendant Johnson and President Gleason of the ILA was finalized in a series of correspondence dating from May 17, 1974 to May 24, 1974 (A. II: 2-5).

The Executive Board members discussed and approved the affiliation through a series of individual telephone calls, with nothing conveyed to them in writing and no group debate or discussion on the merits or liabilities of the proposed affiliation (A. 99-100, 147).

The Executive Board of Local 47 did not discuss the terms or conditions for affiliation of the other affiliation offers before accepting the ILA proposal (A. 150-151). At no time was the understanding entered into between Defendant Johnson and President Gleason of the ILA reduced to writing and communicated to the membership of Local 47 (A. 104-105, 111).

On May 24, 1974, the Defendants mailed a ballot to each member of Local 47 for a referendum on the question of affiliation with the ILA (A. 16-19, 147). No other proposal was offered for a vote (A. 149-150). The letter attached to the ballot purported to represent the entire agreement between Local 47 and the ILA, but it contained no mention of the previously discussed oral agreements for the payment of a per capita tax, or of any constitutional provisions of the ILA (A. 141-144). This letter contained all of the information which the Executive Board in their infinite wisdom chose to divulge to the members of Local 47[5] (A. 104-105).

The First Referendum was enjoined and the ballots impounded by the District Court because the secrecy and the integrity of the ballot had been seriously violated.[6] The Second Referendum was also enjoined by the Court

[5]The reason given by Defendant Johnson for the appalling lack of communication with the seafaring membership concerning the other affiliation offers which had been received was that as the full time staff officer for Local 47 he did not believe this was in the best interest of the membership to know (A. 129, 152).

The only other means by which the membership of Local 47 would have known of the proposed plans to affiliate with the ILA was if they had attended the 1974 union convention where the idea was casually discussed, but Local 47's constitution and by-laws require you to be an elected delegate to attend the convention with reimbursed expenses (A. 153). Any other member of Local 47 who wished to attend was required to travel to the convention site from his own home at his own expense.

[6]The referendum ballots were sent out to members of Local 47 to be returned to a post office box in Cleveland by June 24, 1974. The outside envelope which the members returned contained the signature and membership number of the voter. The inside envelope contained the ballot (A. 115). Defendants Johnson and Duff and other persons under their direction would periodically pick up the ballots from the post office box and outside the presence of any neutral observer, or any observer at all, open both ballots thereby violating the secrecy of the balloting and enabling Defendants to determine the trend of the election so they could obtain more favorable votes for affiliation with the ILA if such was needed (A. 115).

basically because insufficient notice and information had been given to the membership.[7]

On December 3, an informal hearing was conducted by the Court in chambers to approve a plan for the third referendum which would conform to the Court's July 5, 1975, order. MEBA in an effort to protect its interest filed a Motion to Appear on the Ballot and a Motion to Intervene in the pending lawsuit. At that hearing the Court denied MEBA's Motion to intervene in the action but ordered that the affiliation proposal of MEBA be placed on the ballot along with that of the ILA.[8]

C. Proceeding Below

On appeal to the Sixth Circuit, the Court of Appeals affirmed the entire District Court's decision with the ex-

[7]The Court issued its Order July 5, enjoining the conduct of the second referendum and any future referendum unless approved by the Court. The Court went on to hold:

> "No such plan will be approved unless it contains, at a minimum, adequate safeguards for the secrecy of the ballot, full disclosures of all the terms of all affiliation proposals, as well as copies of the constitution of the organization with which affiliation is to be considered and voted upon, and access to the mailing list of Defendant Local 47 by all members in sufficient time to express their views before a vote is to begin." (A. 200-211).

[8]In support of this aspect of its order the Court stated:

> ". . . Although it is true that §3 of Article XXIII of the Constitution of Local 47 does not require that all affiliation proposals be voted upon the same ballot, it somehow seems unnecessarily grudging for the union officers to conduct a referendum on only the proposal which they personally support. This Court has previously indicated that it would not hesitate to enjoin the Defendants from using the Union Constitution to avoid a referendum on an affiliation proposal. Such a refusal by union officers, who are, after all, fiduciaries, runs afoul of the policies which underlie §§411 and 501, because seriatim balloting in this case may result in unfair unadvantage for the proposal favored by the union leadership. Thus, the Court will enjoin the use of the constitutional provision and order the MEBA proposal placed on the ballot along with the ILA proposal." (A. 229).

ception of its direction to include the MEBA proposal on a referendum ballot.

Applicants for Intervention now petition this Court to review the Court of Appeals judgment of affirmation in favor of the Respondent's motion to deny intervention.

REASONS FOR GRANTING THE WRIT OF CERTIORARI

1. This Case Presents an Important Issue of National Labor Policy Requiring Resolution by This Court

A. The issue in this case is whether MEBA qualifies for nonstatutory intervention of right within the meaning of Rule 24(a)(2) Fed. R. Civ. P. when the subject of the original cause involves the construction of the Labor Management Reporting and Disclosure Act, 29 U.S.C. Sections 411(a)(1) and 501(a), equal voting rights and fiduciary duties of union officials.

The Ninth Circuit Court of Appeals in the case of *Stockton v. United States,* 493 F.2d 1021, .1023 (9th Cir. 1974) sets out the four requirements which must be met for intervention as a matter of right pursuant to Rule 24 (a) (2) Fed. R. Civ. P.: Motion for intervention must have been timely; applicant for must have an interest in the subject matter of the action; the intervenor's interest must be impaired by a disposition of the action without his intervention; existing parties must not adequately represent his interest. *See*: *Nuesse v. Camp,* 128 U.S. App. D.C. 172, 385 F.2d 694 (1967); *Edmondson v. Nebraska ex rel. Meyer,* 383 F.2d 123 (8th Cir. 1967); MOORE'S FEDERAL PRACTICE, para. 24.09-1.

It is the contention of Applicant Intervenor that it had a very real interest in the matter. Applicant Intervenor took the position with the District Court and the 6th Circuit Court of Appeals that they had offered very significant benefits to Local 47 which were not being communicated to the individual members of Local 47 and, therefore, Applicant for Intervention contends that the individual members of Local 47 were being denied basic rights guaranteed to them by the Labor Management Reporting and Disclosure Act. Said act is the embodiment of a clear intention on the part of Congress that the members of a labor organization have the right to a "full and active participation" in the affairs of the union. *See, American Federation of Musicians v. Wittstein,* 379 U.S. 171 (1964).

It has further been pointed out by Chief Judge Lumbard of the Second Circuit that Congress has determined that:

> " . . . the efficiency of a monolithic union under autocratic rule was gained at too great a price if it necessitated any sacrifice in the members' rights to determine the course of their organization. The balance was struck in favor of union democracy. Only a union responsive to the rights of all its members can achieve the ideals of responsibility, opportunity and self-determination that are recognized as fundamental values in the labor movement." *Navarro v. Gannon,* 385 F.2d 512, 518 (2nd Cir. 1967).

Given the Congressional policy cited above, and the further case law that has been developed therefrom, it is clear that any right to vote which is guaranteed by Section 411 of the Landrum-Griffin Act must be a right to a meaningful vote. In fact, the Sixth Circuit Court has held as much. *See, Sertic v. The District Council of Carpenters,* 423 F.2d 515, 521 (Sixth Circuit 1970).

It seems abundantly clear that a meaningful vote is not a deliberately uninformed vote, because as such there is no choice, no selection, but merely a shot in the dark.

The Applicant Intervenor has taken the position in the lower Courts that it was in a position and had, in fact, operated in the best spirit of the law which is guaranteed to give each individual union member an opportunity of free choice as to whether or not, in this instance, he would become affiliated with one union or another, or remain unaffiliated.

The District Court, in its Memorandum and Order filed January 29, 1975 took the position that because the statutes involved in this case conferred these rights to members of labor organizations only, and further that there are no rights here being asserted which benefited unions as distinct from their members, then, and on that basis, Rule 24 of the Federal Rules of Civil Procedure did not apply to allow this Applicant Intervenor the opportunity to intervene in the pending lawsuit. With this judgment, the Applicant Intervenor disagrees.

The Sixth Circuit Court of Appeals took the position that since the underlying suit is based on statutes 29 U.S.C. §§ 411 and 501 which confer certain rights on members of labor organizations, there are no rights being asserted by the Applicant Intervenor which benefit unions as distinct from their members. Applicant for Intervention also disagrees.

In *Donaldson v. United States*, 400 U.S. 517, 531 (1971) this Court stated:

> "Rule 24 (a)(2) speaks in general terms of 'an interest relating to the property or transaction which is the subject of the action.' What is obviously meant there is a significantly protectable interest. . . ."

Reason seems to indicate that if rights of individual members of labor organizations are going to be protected, then those entities, be they individuals and/or organizations, which seek to benefit individual members of local organizations must be in a position to be a part of any litigation which might affect the rights of individual members of labor organizations. In this instance, where individual members of Local 47 initially filed a lawsuit against the officers of their own organization for the reason that said officers were not fully informing the members of all of the opportunities which were being made available to them, in which it had an interest and in which it was so situated that the disposition of the action might as a practical matter impair or impede its ability to protect that interest, it seems clear that MEBA should have been made a part of the case.

A labor union, when it appears as a prospective party in a lawsuit, must be treated as an individual which also has certain rights. No one can deny the fact that this Applicant for Intervention has rights and interests which it has the right, and, therefore, must be given the opportunity to protect. In the case at hand, it seems axiomatic.

Further, in *Diaz v. Southern Drilling Corp.*, 427 F.2d 1118, 1125 (5th Cir. 1970), *cert. denied*, 400 U.S. 878 (1970) it was stated that, "Where the supposed representative actually represents an interest adverse to the intervenor, the representation is not adequate". *See*: *Martin v. Kalvar Corp.*, 411 F.2d 552, 553 (5th Cir. 1969).

Although, certainly this honorable Court is not compelled to adopt the appellate Court's interpretation of the scope of Rule 24(a)(2) Fed. R. Civ. P., Applicant for Intervention respectfully submits that no existing party to this lawsuit views the Applicant's placement on the ballot favorably nor does any existing party adequately protect MEBA's right to present their merger proposal to the rank and file members.

Applicant for Intervention has asserted a cognizable interest that is not adequately represented by an existing party and may be impeded from asserting its right to representation of these members as a practical matter if intervention is denied. Thus, all four requirements of Rule 24(a)(2) have been met and intervention should be allowed.

B. Review of this case is essential to the preservation of the fundamental rights of the union and essential to guarantee the full and active participation by the rank and file in the affairs of the union. Applicant for Intervention submits that their proposition is timely for the foregoing reasons set forth in Section A of this petition.

CONCLUSION

The issue in the original case which compels Applicant for Intervention to file this writ for intervention pursuant to Rule 24(a)(2) Fed. R. Civ. P., is whether the rank and file members of Local 47, whose voting rights have been tread upon, are to be deprived of a meaningful vote since they will not be permitted to choose between bona fide competing, affiliation proposals, one of which is MEBA's.

If MEBA is to be denied its right to present its affiliation proposal, it should be so only after a reasoned consideration and explanation by this Court of the scope of Rule 24 (a)(2) and the competing National Labor Law policy interest which compel such a result.

Accordingly, Petitioners pray that this Court grant their petition for a writ of certiorari.

Respectfully submitted,

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APPENDIX

OPINION OF THE DISTRICT COURT

(Filed January 20, 1975)

Civil Action C74-546

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

NORMAN F. BLANCHARD, *et al.*,
Plaintiffs,

v.

ROLLA R. JOHNSON, *et al.*
Defendants

and

MARINE ENGINEERS BENEFICIAL ASSOCIATION, ASSOCIATED MARITIME OFFICERS, AFL-CIO,
Applicants for Intervention.

ORDER

This cause is before the Court on a motion by District 2, Marine Engineers Beneficial Association. Associated Maritime Officers [hereafter MEBA] to intervene as a party plaintiff and on a motion by MEBA to be placed on the ballot on a referendum to be held on the question of affiliation. The defendants have also petitioned the Court for its approval of their plan for the conduct of the balloting. All have briefed these matters.

As the Court has taken pains to show in its Memorandum of July 9, 1974, this suit is based on statutes, 29

U.S.C., §§412 [sic] and 501, which confer certain rights on *members* of labor organizations. Thus, there are no rights here being asserted which benefit unions as distinct from their members. Therefore, since Rule 24, Federal Rules of Civil Procedure, assumes that there is an intersection of interests among plaintiffs and intervenors, it is clear that the motion to intervene of MEBA must be denied.

Placing MEBA on the affiliation referendum ballot is quite another matter however. Although it is true that § 3 of Article XXIII of the Constitution of Local 47 does not require that all affiliation proposals be voted upon on the same ballot, it somehow seems unnecessarily grudging for the union officers to conduct a referendum on only the proposal which they personally support. This Court has previously indicated that it would not hesitate to enjoin the defendants from using the union constitution to avoid a referendum on an affiliation proposal. Such a refusal by union officers, who are, after all, fiduciaries, runs afoul of the policies which underlie §§ 411 and 501, because seriatim balloting in this case may result in unfair advantage for the proposal favored by the union leadership. Thus, the Court will enjoin the use of the constitutional provision and order the MEBA proposal placed on the ballot along with the ILA proposal.

As to the defendants' plan for holding the balloting, the Court expressly approves the use of the American Arbitration Association.

Plaintiffs' objections to the timing of the referendum do not appear to be well taken. Given the wide geographic dispersal of the membership, no time would seem to be particularly felicitous for any election. However, the wide dispersal does argue for a maximum period of time between the mailing of ballots and the deadline for their return so as to facilitate the free discussion and interchange of ideas which lie at the heart of § 411. The Court

therefore finds any period of less than thirty (30) days for balloting to be suspect, within the facts of this case. The Court will thus require at least thirty (30) days for the members to discuss the issues and return their ballot.

Plaintiffs' objections to the limitations on the mailing of views by members are well taken. The Court agrees that there is no reason why members should be denied the opportunity to mail their views as often as they wish and at the times they wish. Since the concept of majority rule is at the center of federal labor policy, *Sheldon v. O'Callaghan*, 497 F.2d 1276, 1282, 86 LRRM 3064 (2nd Cir. 1974), it is imperative that the lines of communication among the membership be as unfettered as reason can make them. Union officials bear a heavy burden of justification for any acts which unnecessarily restrain the ability of the members to discuss matters on which they are to vote. No justification for this limitation has been offered by the union leadership and none appears to the Court. Accordingly, the plan as proposed is modified to permit any member to mail his views at any time to the membership as often as he chooses so long as he bears the expense of the mailings.

To sum up: The motion of MEBA to intervene as a party plaintiff is denied; the affiliation proposal of MEBA shall appear on the ballot along with that of the ILA; the referendum shall be held at such time as defendants propose through the auspices of the American Arbitration Association; defendants shall permit at least thirty (30) days for dissemination of views by the membership following the mailing of the ballots; and any member shall be permitted to mail his views at any time to the membership through the AAA, as often as he wishes so long as he bears the expense thereof.

IT IS SO ORDERED.

/s/ NICHOLAS J. WALINSKI
United States District Judge

OPINION OF THE COURT OF APPEALS

(Filed April 2, 1976)

Nos. 75-1606, 75-1607

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

NORMAN F. BLANCHARD. *et al.*,
Plaintiff-Appellees,

v.

ROLLA R. JOHNSON, *et al.*,
Defendants-Appellants.

APPEAL from the United States District Court for the Northern District of Ohio, Eastern Division.

Before: EDWARDS, CELEBREZZE and ENGEL, Circuit Judges.

CELEBREZZE, Circuit Judge: Appellees, members of the Great Lakes and Rivers District, Masters, Mates and Pilots—Local 47 (hereinafter Local 47), initiated this action in the District Court seeking to enjoin a referendum which was in progress among the members of Local 47. The referendum raised the question of whether Local 47 should affiliate with the International Longshoreman's Association (hereinafter ILA). Appellees were supporters of a rival union, District II Marine Engineers Beneficial Association—Associated Maritime Officers (hereinafter MEBA), and of its attempt to convince Local 47 to affiliate with MEBA. Named as defendants were Local 47; Rolla R. Johnson, the Local's President and a member of its Executive Board; and seven other members of the local's Executive Board. Appellees, in their Complaint, alleged that the officers violated their fiduciary

duties to and deprived the members of Local 47 of their right to "an intelligent and knowledgeable" vote on the issue of affiliation.

Local 47 has approximately 550 members, all of whom are supervisory personnel on ships which sail the Great Lakes and adjoining waterways. Due to the limitation on membership to supervisors, Local 47 is regulated by the Labor Management Reporting and Disclosure Act of 1959 (hereinafter LMRDA), 29 U.S.C. § 401 et seq. (1970).

The nature of their employment makes communication among members of Local 47 difficult. An annual convention is held in March, and every third year officers are nominated by the convention delegates and thereafter elected by mail ballot of all members.

In November of 1973 Local 47 disaffiliated itself from the International Organization of Masters, Mates and Pilots, because that organization had changed its constitution in a manner which threatened the autonomy of Local 47. Thereafter, a number of labor organizations sought the affiliation of Local 47, including ILA, MEBA and the Teamsters. The District Court found that these three organizations submitted definite affiliation proposals to the Executive Board of Local 47. The Executive Board, pursuant to Article XXIII of the Constitution of Local 47, considered and approved the ILA proposal and submitted it by referendum to the membership for ratification or rejection. Appellees contended below that the Executive Board, whose members considered the ILA proposal superior to the other proposals, failed to provide the membership with sufficient information about the other proposals to allow the members to cast an informed vote.

On June 18, 1973, following two days of hearings, the District Court impounded the ballots in the affiliation referendum because the Executive Board had seriously

impaired the secrecy and integrity of the balloting by opening some ballots to gauge the trend of the election. The District Court did not enjoin any future referendum "feeling it sufficient to leave the officers free to conduct another vote in accordance with Local 47's constitution and '. . . with adequate information as to the terms of any affiliation with the ILA.' "[1]

Appellants held another referendum immediately, mailing out new ballots and cover letters on June 21, 1974. Appellees filed a motion for a temporary restraining order which the District Court declined to issue. Rather, the District Court set a July 1, 1974, hearing on Appellees original motion for a preliminary injunction. Following the July 1, 1974, hearing the District Court issued the Memorandum Opinion, in which it concluded that 29 U.S.C. § 411(a)(1)[2] guaranteed union members the right to a meaningful vote in union elections. The District Court further concluded that 29 U.S.C. § 501(a) created a duty on the part of the officers of a union to provide the membership with sufficient information on the issues to allow members to cast an informed vote. The trial court noted that union officers may convey their opinions on the issues to the membership but are also duty-bound to see that points of view at variance with their own. if such exist, are disseminated. The District Court concluded that the membership had a right, by virtue of Sections 411(a)(1) and 501(a), "to know and vote on all affiliation proposals, to know all the terms thereof, as well as the governing law

[1] *Norman F. Blanchard, et al. v. Rolla, et al.*, No. C 74-288 (N. D. Ohio, filed July 5, 1974), Joint Appendix, Vol. I, at 201.

[2] **(a) (1) Equal rights.**—Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws.

of any organization with which they were to affiliate, and to know the views of other members on the proposals."[3] The District Court enjoined the ongoing referendum and required the officers of Local 47 to submit for approval a plan for conducting future referenda which would be consistent with the conclusions expressed in the Court's opinion.

Appellants filed a Motion to Modify the July 5, 1974, order. On November 1, 1974, the District Court filed a Memorandum and Order denying Appellants' motion stating:

> Defendants' motion does not appear well taken however. It should be noted that this Court's Order does not require the union executive board to submit *all* affiliation proposals to the membership for a referendum. What it does require is full disclosure of the terms of all proposals before a vote on any one will be approved by this Court.[4]

On December 3, 1974, MEBA filed a motion seeking to intervene, and a motion seeking to have its affiliation proposal placed on the referendum ballot. On January 20, 1975, the District Court filed another Memorandum and Order. The Court denied MEBA's motion to intervene but granted the motion to appear on the ballot, stating

> Placing MEBA on the affiliation referendum ballot is quite another matter however. Although it is true that § 3 of Article XXIII of the Constitution of Local 47 does not require that all affiliation proposals be voted upon on the same ballot, it somehow seems unnecessarily grudging for the union officers to conduct a referendum on only the proposal which they personally support. This Court has previously indicated that it would not hesitate to enjoin the defendants from using the union constitution to avoid

[3] District Court Opinion, Joint Appendix, Vol. I, at 209.

[4] Joint Appendix, Vol. I., at 215.

a referendum on an affiliation proposal. Such a refusal by union officers, who are, after all, fiduciaries, runs afoul of the policies which underlie §§ 411 and 501, because seriatim balloting in this case may result in unfair advantage for the proposal favored by the union leadership. Thus, the Court will enjoin the use of the constitutional provision and order the MEBA proposal placed on the ballot along with the ILA proposal.[5]

Appellants bring this appeal claiming that, consistent with their duty as defined in Local 47's Constitution,[6] they rejected MEBA's affiliation proposal and that the District Court erred in concluding that Sections 411(a)(1) and 501(a) of the LMRDA require presentation of a rejected offer in a referendum. Appellants further contend that the District Court properly denied MEBA's motion to intervene.

We turn first to consideration of the District Court's denial of MEBA's motion to intervene. Rule 24(a)(2), Fed. R. Civ. P., establishes a threefold test for nonstatutory intervention of right:

> (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

We note that from its inception Appellants' case has been handled by Gerald B. Lackey, a member of the Toledo, Ohio, law firm which regularly represents MEBA. Appellees are Local 47 members who are supporters of MEBA in its efforts to secure Local 47's affiliation. A representative of MEBA suggested to Appellee Blanchard that he contact Lackey and another MEBA representative was present when Blanchard first met with Lackey. It was at this meeting that plans to take legal action against Local 47 and its officers were formulated. It appears that the interests of MEBA and of Appellees in this action are virtually identical. As we noted in *Afro American Patrolmen's League v. Duck*, 503 F.2d 294, 298 (6th Cir. 1974), "[a]n applicant for intervention has the burden of showing that representation by existing parties is inadequate." MEBA failed to carry this burden and the District Court did not err in denying MEBA's motion to intervene.

[5] Joint Appendix, Vol. I., at 229.

[6] Constitution of Great Lakes and Rivers District, Masters, Mates and Pilots—Local 47, art. XVII, § 3 and art. XXIII, § 3.

We turn to consideration of the remaining issue raised by Appellants—whether the District Court erred in requiring Appellants to include MEBA's affiliation proposal on the referendum ballot. Appellants point to Local 47's constitution and by-laws as not requiring inclusion of the MEBA proposal on the referendum ballot because they had in good faith considered the proposal and rejected it.

Appellees contend that the District Court correctly read LMRDA Sections 411(a)(1) and 501(a) to create a duty on the part of the individual Appellants to provide the membership with sufficient information to evaluate all affiliation proposals.

The Supreme Court in *Musicians Federation v. Wittstein*, 379 U.S. 171, 182-183 (1964), stated:

> "The pervading premise of both these titles [Title I and Title IV. Labor-Management Reporting and Disclosure Act of 1959] is that there should be full and active participation by the rank and file in the affairs of the union."

This Court, after reviewing the legislative history and judicial consideration of the LMRDA, concluded in *Sertic v. District Council of Carpenters*, 423 F.2d 515, 521 (6th

Cir. 1970), that "[u]nion members are entitled under the Act to the right of a meaningful vote. . . ."

However, this Court is not unfettered in its determination of what constitutes "full and active participation" or a "meaningful vote." As the Supreme Court noted in *Calhoon v. Harvey*, 379 U.S. 134, 138-139 (1964), issued the same day as *Musicians Federation, supra:*

> "Congress carefully prescribed that even this right against discrimination is 'subject to reasonable rules and regulations' by the union."

The Court also states

> "Plainly, [§101(a)(1)] is no more than a command that members and classes of members shall not be discriminated against in their right to nominate and vote." 379 U.S. at 139.

The Second Circuit in *Sheldon v. O'Callighan* [sic], 497 F.2d 1276, 1281 (2nd Cir. 1974), subscribed to the reasoning in *Allen v. International Alliance of Theatrical Employees*, 338 F.2d 309, 317 (5th Cir. 1964), "[t]his Court recognizes the need to exercise what Judge Wisdom referred to as a 'sound reluctance . . . to interfere in internal union affairs.'" The *Sheldon* Court added

> "The duly elected officers of a union have a right and a responsibility to lead, and to give the members the benefit of their advice on questions that arise." 497 F.2d at 1282.

The District Court Order in the instant case concluded with the following paragraph:

> To sum up: The motion of MEBA to intervene as a party plaintiff is denied; the affiliation proposal of MEBA shall appear on the ballot along with that of the ILA; the referendum shall be held at such time as defendants propose through the auspices of the American Arbitration Association; defendants shall permit at least thirty (30) days for dissemination of views by the membership following the mailing of the ballots; and any member shall be permitted to mail his views at any time to the membership through the AAA, as often as he wishes so long as he bears the expense thereof. IT IS SO ORDERED.[7]

We conclude that the District Court's actions in resolving this matter, with the exception of its direction to include the MEBA proposal on the referendum ballot, were proper under Section 411(a)(1).[8] The District Court unnecessarily intruded into the internal operations of Local 47 by directing that the MEBA proposal be added to the ballot. We do not read § 411(a)(1) to disallow seriatim voting on affiliation proposals so long as sufficient information about all proposals received by the Executive Board is disseminated to the membership to allow a reasoned and informed vote on the proposal which appears on the ballot. Appellees and their fellow members of Local 47 will be able to exercise their statutorily guaranteed right to an informed vote assuming the above dissemination of information. The membership of Local 47 may approve the ILA proposal or may reject it and await the opportunity to consider other such proposals.

That portion of the District Court's Judgment which directs that MEBA's affiliation proposal appear on the referendum ballot is reversed, the remaining portions of the Judgment are affirmed.

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[7] Joint Appendix, Vol. I, at 230.

[8] The portions of the Judgment of the District Court which we affirm are properly grounded upon Section 411(a)(1). The actions directed by the portion of the Judgment which we reverse would be improper under either Section 411(a)(1) or Section 501(a). Thus we need not reach the question of the applicability of the Section 501(a) fiduciary duty to the instant action.

JUDGMENT OF THE COURT OF APPEALS

(Filed April 2, 1976)

Nos. 75-1606, 75-1607

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

NORMAN F. BLANCHARD, *et al.*,
Plaintiff-Appellees,

vs.

ROLLA R. JOHNSON, *et al.*,
Defendants-Appellants.

Judgment of the District Court regarding the portion of the Judgment which directs that MEBA's affiliation proposal appeal on the referendum ballot is reversed and the remaining portions of the Judgment are affirmed.

Each party to pay its own costs on appeal.